

HOUSE BILL No. 1374

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-13.5-1; IC 4-13.6; IC 5; IC 8; IC 10-18-4; IC 14; IC 20-25-4; IC 20-26-7; IC 20-48-4; IC 21-37; IC 36-1; IC 36-9.

Synopsis: Public works projects. Changes the standard of award of a public works contract from lowest and best bidder to lowest responsive and responsible bidder in several statutes governing public works by various governmental entities. Establishes certain criteria to determine when a bidder is "responsible" and "responsive". Makes certain public works statutes relating to airports applicable to the aeronautics functions of the Indiana department of transportation. Repeals a superseded definition of "public works".

Effective: July 1, 2008.

Stilwell

January 16, 2008, read first time and referred to Committee on Labor and Employment.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1374

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-13.5-1-1.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2008]: **Sec. 1.7. The definitions in IC 5-16-0.5**
4 **apply throughout this article.**

5 SECTION 2. IC 4-13.5-1-8 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) The commission
7 may employ architects, engineers, space planners, construction
8 managers, and other professional persons it considers necessary to
9 prepare complete plans and specifications necessary for bidding for
10 construction. The commission shall consider economy of operation to
11 the extent practicable in preparing and approving plans and
12 specifications.

13 (b) The plans and specifications shall be presented for approval to:
14 (1) the department;
15 (2) if the facility is designed to house the supreme court or court
16 of appeals, the administrator of the supreme court for approval by
17 the courts;



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(3) if the facility is a correctional facility, the department of correction; and

(4) if the facility consists of communications system infrastructure, the integrated public safety commission.

(c) After the plans and specifications have been approved by the commission under subsection (b), the commission shall advertise for and receive construction bids and award contracts to the ~~best~~ **responsive and responsible** bidders in the same manner as required by law for the department. However, with respect to a facility that consists of communications system infrastructure, if the commission finds that the integrated public safety commission has already advertised for and received construction bids or awarded contracts to the ~~best~~ **responsive and responsible** bidders, or both, substantially in the same manner as required by law for the Indiana department of administration, the commission is not required to repeat the advertisement, receipt of bids, or award of contracts. In making the finding described in this subsection, the commission may rely upon a certificate of the integrated public safety commission. If the commission makes the finding described in this subsection, that is all the authority the commission needs to accept the assignment of the bids or contracts, or both, from the integrated public safety commission and all the authority the integrated public safety commission needs to assign the bids or contracts, or both, to the commission.

(d) With regard to participation by minority and women's business enterprises (as defined in IC 4-13-16.5-1 and IC 4-13-16.5-1.3), the commission shall act in the same manner as required by law for the department.

SECTION 3. IC 4-13.6-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. "Contractor" ~~means any person who has entered into or seeks to enter into a public works contract with the division:~~ **has the meaning set forth in IC 5-16-0.5-2.**

SECTION 4. IC 4-13.6-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. "Person" ~~means any association, corporation, limited liability company, fiduciary, individual, joint stock company, joint venture, partnership, sole proprietorship, or other private legal entity:~~ **has the meaning set forth in IC 5-16-0.5-4.**

SECTION 5. IC 4-13.6-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. "Professional services" ~~mean the services of:~~

(1) a person registered or certified under IC 25-4;

(2) a person licensed under IC 25-31; or

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(3) a person who performs services or studies that:

(A) relate to the design or the feasibility of a building, structure, or improvement; and

(B) are recognized in the industry as professional in nature.

has the meaning set forth in IC 5-16-0.5-5.

SECTION 6. IC 4-13.6-1-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) "Public works" means either of the following:

(1) The process of altering, building, constructing, demolishing, improving, or repairing a public building or structure.

(2) A public improvement to real property owned by, or leased in the name of, the state.

(b) The term includes the following:

(1) The preparation of drawings, plans, and specifications for a process or improvement described in subsection (a).

(2) The routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

has the meaning set forth in IC 5-16-0.5-6.

SECTION 7. IC 4-13.6-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. "Public works contract" or "contract" means a contract between the division and a person for the performance of some work or service related to the completion of a public works project for a governmental body. However, the terms "public works contract" or "contract" do not include contracts for professional services, unless specifically provided to the contrary. **has the meaning set forth in IC 5-16-0.5-7.**

SECTION 8. IC 4-13.6-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15. "Responsible contractor" means a contractor that:

(1) is capable of performing a public works contract fully;

(2) has the integrity and reliability that will insure good faith performance; and

(3) is qualified under IC 4-13.6-4, if applicable.

has the meaning set forth in IC 5-16-0.5-9.

SECTION 9. IC 4-13.6-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. "Responsive contractor" means a contractor that has submitted a bid or a quotation in conformity with instructions, contract documents, terms, and other conditions for a contract. **has the meaning set forth in IC 5-16-0.5-10.**

SECTION 10. IC 4-13.6-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) When the commissioner makes a written determination that an emergency

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condition exists due to fire, flood, windstorm, casualty, or other condition (including mechanical failure of any part of a building or structure), and the emergency condition endangers the health, safety, or welfare of the public or necessary governmental operations, the division may act to repair any damage caused by the emergency condition without awarding a public works contract under section 2 of this chapter.

(b) In the case of an emergency described in subsection (a), the division shall invite quotations from at least three (3) contractors known to the division to deal in the work required to be done if the division can do so without jeopardizing successful repair. However, if fewer than three (3) contractors are known to the division to be qualified to perform the work, the division shall invite quotations from as many contractors as are known to be qualified to perform the work. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The division shall keep a copy of the commissioner's determination and the names of the contractors from whom quotations were invited in the division's files.

(d) The division shall award a contract to the lowest responsible and responsive contractor. However, the division may award a contract to a contractor ~~not qualified under that~~ **does not meet the requirements of IC 4-13.6-4 and IC 5-16-0.5**, if necessary to remedy the emergency condition.

SECTION 11. IC 5-1-17-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.5. The definitions in IC 5-16-0.5 apply in this chapter.**

SECTION 12. IC 5-1-17-18.5, AS ADDED BY P.L.120-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 18.5. (a) This section applies to bids received with respect to a capital improvement under this chapter:**

- (1) that is constructed by, for, or on behalf of the authority; and
- (2) for which only one (1) bid was received from a **responsive and** responsible bidder.

(b) The board may attempt to negotiate a more advantageous proposal and contract with the bidder if the board determines that rebidding:

- (1) is not practicable or advantageous; or
- (2) would adversely affect the construction schedule or budget of the project.

(c) The board shall prepare a bid file containing the following

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information:

- (1) A copy of all documents that are included as part of the invitation for bids.
- (2) A list of all persons to whom copies of the invitation for bids were given, including the following information:
 - (A) The name and address of each person who received an invitation for bids.
 - (B) The name of each bidder who responded and the dollar amount of the bid.
 - (C) A summary of the bid received.
- (3) The basis on which the bid was accepted.
- (4) Documentation of the board's negotiating process with the bidder. The documentation must include the following:
 - (A) A log of the dates and times of each meeting with the bidder.
 - (B) A description of the nature of all communications with the bidder.
 - (C) A copy of all written communications, including electronic communications, with the bidder.
- (5) The entire contents of the contract file except for proprietary information included with the bid, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the invitation for bids.

SECTION 13. IC 5-2-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a) For purposes of public works contracts, the definitions in IC 5-16-0.5 apply throughout this section.**

(b) Upon completion by the architect, or architects, and the approval by the commission of these plans and specifications, the commission shall at one **(1)** time or from time to time advertise for and receive competitive bids for the construction and equipment of the building or buildings. Upon receipt of such bids, the commission shall then proceed to award a contract, or contracts, to the lowest ~~and best~~ **responsive and responsible** bidder, or bidders. The procedure for advertising, receiving bids, and awarding contracts shall conform to all state laws applicable thereto.

SECTION 14. IC 5-16-0.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 0.5. Responsive and Responsible Contractors

Sec. 1. (a) Except as provided in subsection (b), this chapter

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1 applies to any public works statute.

2 (b) This chapter does not apply to federally funded construction
3 projects if application of the chapter would jeopardize the receipt
4 or use of federal funds for the public works project.

5 Sec. 2. (a) As used in this chapter, "contractor" means a person
6 that has entered into or seeks to enter into a public works contract
7 with a governmental body.

8 (b) The term includes a bidder or quoter.

9 Sec. 3. As used in this chapter, "governmental body" means an
10 agency, a board, a branch, a bureau, a commission, a council, a
11 department, an institution, an office, or another establishment of
12 any of the following:

13 (1) The state.

14 (2) A political subdivision (as defined in IC 36-1-2-13).

15 (3) Any other public entity established by Indiana law.

16 Sec. 4. As used in this chapter, "person" means an association,
17 a corporation, a limited liability company, a fiduciary, an
18 individual, a joint stock company, a joint venture, a partnership,
19 a sole proprietorship, or any other private legal entity.

20 Sec. 5. As used in this chapter, "professional services" means the
21 services of any of the following:

22 (1) A person registered or certified under IC 25-4.

23 (2) A person licensed under IC 25-31.

24 (3) A person that performs services or studies that:

25 (A) relate to the design or the feasibility of a building,
26 structure, or improvement; and

27 (B) are recognized in the industry as professional in
28 nature.

29 Sec. 6. (a) As used in this chapter, "public works" means:

30 (1) any constructing, reconstructing, altering, repairing,
31 rehabilitating, refinishing, refurbishing, remodeling,
32 renovating, custom fabricating, maintenance, landscaping,
33 improving, moving, wrecking, painting, decorating,
34 demolishing, or adding to or subtracting from a building,
35 structure, airport facility, highway, roadway, street, alley,
36 bridge, sewer, drain, ditch, sewage disposal plant, water
37 works, parking facility, railroad, excavation, or other project,
38 development, or improvement; or

39 (2) any part of an activity described in subdivision (1);
40 involving real property owned by, or leased in the name of, a
41 governmental body that is paid for out of a public fund or a special
42 assessment.

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(b) The term includes any activity described in subsection (a), regardless of whether the performance of the work involves the addition to, or fabrication into, any:

- (1) structure;
- (2) project;
- (3) development;
- (4) real property; or
- (5) improvement;

of any property owned by, or leased in the name of, the governmental body.

(c) The term includes the preparation of drawings, plans, and specifications for a process described in subsection (a).

Sec. 7. (a) As used in this chapter, "public works contract" refers to a contract between a governmental body and a person for the performance of some work or service related to the completion of a public works project for a governmental body.

(b) The term does not include contracts for professional services, unless specifically provided to the contrary.

Sec. 8. As used in this chapter, "public works statute" refers to any of the following:

- (1) IC 4-13.5.
- (2) IC 4-13.6.
- (3) This article.
- (4) IC 36-1-12.
- (5) Any other statute under which a governmental body performs a public works project.

Sec. 9. (a) As used in this chapter, "responsible contractor" means a contractor that:

- (1) is capable of performing a public works contract fully;
- (2) has the integrity and reliability that will ensure good faith performance; and
- (3) is qualified under IC 4-13.6-4 or another statute relating to the qualification of contractors, if applicable.

(b) The term includes a responsible bidder or a responsible quoter.

Sec. 10. (a) As used in this chapter, "responsive contractor" means a contractor that has:

- (1) submitted a bid or a quotation that:
 - (A) conforms in all material respects to the specifications; and
 - (B) complies specifically with instructions, contract documents, terms, and other conditions for a contract; and

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(2) complied with all applicable laws relating to the award of a public works contract.

(b) The term includes a responsive bidder or a responsive quoter.

Sec. 11. To be considered responsible, a contractor must submit all of the following before award of a contract:

(1) Satisfactory documentation that the contractor is qualified under IC 4-13.6-4 or another applicable statute.

(2) Satisfactory documentation that the contractor has complied with all applicable laws concerning the contractor's entitlement to conduct business in Indiana.

(3) A sworn statement that the contractor has complied with IC 5-16-7 and rules adopted under IC 5-16-7 for a period of five (5) years before submission of the contractor's bid.

(4) A sworn statement that the contractor has complied with Subchapter VI of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e et seq.) and with federal Executive Order No. 11246 as amended by Executive Order No. 11375 for a period of five (5) years before submission of the contractor's bid.

(5) A valid federal Employer Identification Number or, if the contractor is an individual, a valid Social Security number.

(6) Valid certifications of insurance showing minimum coverage for the following:

- (A) General liability.
- (B) Professional liability.
- (C) Worker's compensation.
- (D) Completed operations.
- (E) Hazardous occupation.
- (F) Product liability.
- (G) Automobile.

(7) A sworn statement that all employees to be employed on the public works project will be covered under the contractor's current worker's compensation insurance policy and that all employees are properly classified under the policy.

(8) Documents demonstrating any professional or trade license required by law for any trade or specialty area in which the contractor is seeking a contract award. The documents must include any suspension or revocation of:

- (A) the contractor's license; or
- (B) a comparable license held by a director, an officer, or

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a manager employed by the contractor.

(9) Evidence of participation by:

(A) the contractor; and

(B) each subcontractor that will perform work on the public works contract;

in apprenticeship and training programs applicable to the work to be performed that have been approved by and registered with the federal Department of Labor, Bureau of Apprenticeship and Training by the contractor.

(10) Evidence of medical and hospital benefits for all the contractor's employees to be employed on the public works project. However, if an employee is otherwise covered under a current health and welfare plan, the contractor is not required to provide evidence of medical and hospital benefits for that employee if the contractor submits a sworn statement that the employee is currently covered under another plan.

(11) A sworn statement that the contractor's employees on the public works project are properly classified as either:

(A) an employee; or

(B) an independent contractor;

under all applicable federal, state, and local laws.

(12) An affidavit that the contractor has not entered into a combination or agreement:

(A) relative to the price to be bid by a person to prevent a person from bidding or to induce a person to refrain from bidding; and

(B) that the contractor's bid is made without reference to any other bid.

Sec. 12. A contractor that fails to submit satisfactory evidence of compliance with the requirements of this chapter is not a responsible contractor.

Sec. 13. If a contractor satisfies all the criteria required by section 11 of this chapter, the governmental body awarding the public works contract may request the following information to determine whether the contractor is responsible:

(1) Statements regarding past performance, which shall give an accurate and complete record of all public works completed in the past three (3) years by the contractor. The contractor must give the following:

(A) The names and addresses of the projects.

(B) The original contract price and the final contract price of each project.

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(C) The names of all subcontractors used, if applicable.

(D) A statement as to compliance with completion deadlines.

(2) Any determinations of violations of any of the following:

(A) The federal Occupational Safety and Health Act.

(B) The National Labor Relations Act.

(C) The federal Davis-Bacon Act.

(D) IC 5-16-7.

(E) Any other federal, state, or local laws.

(3) Information supporting the integrity, character, and reputation of the contractor.

SECTION 15. IC 5-16-1-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.1. (a) For purposes of this section, the term "person" includes a sole proprietorship, partnership, association, corporation, limited liability company, fiduciary, or individual.

(b) This chapter applies to the construction, alteration, or repair of a public building or other public work or improvement owned by the state. In addition, The provisions of this chapter concerning the adoption of plans and specifications and the awarding of contracts also apply to work or improvements to be performed on real property that is being or that will be leased by the state from another person if:

(1) the estimated cost of the work or improvement is twenty-five thousand dollars (\$25,000) or more; and

(2) the lease gives the state an option to buy the real property.

SECTION 16. IC 5-16-1-1.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.2. (a) When a public building or other public work or improvement **works project** of any character is to be ~~constructed, erected, altered, or repaired~~ **performed** at the expense of the state or a commission created by law (~~excepting the Indiana department of transportation~~); and when the estimated costs of the work or improvement ~~is~~ **are** greater than twenty-five thousand dollars (\$25,000), the board, commission, trustee, officer, or agent acting on behalf of the state or commission created by law (~~excepting the Indiana department of transportation~~); shall adopt plans and specifications and shall award a contract for the public work or improvement to the lowest ~~and best bidder~~ **responsive and responsible contractor** who submits a bid for the performance of the work.

(b) Notwithstanding subsection (a), whenever the cost of any public work is estimated to be less than twenty-five thousand dollars (\$25,000), the officer or agent acting on behalf of the state or commission having authority to employ workmen and own, rent, or

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1 lease equipment may purchase materials in the manner provided by law
 2 and perform the work by means of its own workmen and owned or
 3 leased equipment without awarding a construction contract for the
 4 work.

5 SECTION 17. IC 5-16-1-1.4 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.4. For the purpose of
 7 securing bids or for the purpose of causing the work to be done in the
 8 desired manner, the state or commission created by law ~~(excepting the~~
 9 ~~Indiana department of transportation)~~ shall prepare, and place on file
 10 in its office, plans and specifications of the ~~building or improvements~~
 11 ~~sought to be constructed, erected, altered, or repaired~~ **public work to**
 12 **be performed** whenever the estimated cost of the work is greater than
 13 twenty-five thousand dollars (\$25,000).

14 SECTION 18. IC 5-16-1-1.5 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.5. The governing
 16 board of ~~any~~ **a** state educational institution, acting on behalf of ~~said the~~
 17 institution, may purchase materials in the manner provided by law and
 18 perform any work by means of its own employees and owned or leased
 19 equipment in the ~~construction, rehabilitation, extension, maintenance~~
 20 ~~or repair of any building, structure, improvement or facility~~ **public**
 21 **works project** of ~~said the~~ institutions, without awarding a contract
 22 ~~therefor, for the work~~ whenever the cost of ~~such the~~ work ~~shall be~~ **is**
 23 estimated to be less than fifty thousand dollars (\$50,000).

24 SECTION 19. IC 5-16-1-1.7 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.7. On agricultural or
 26 forestry land owned or occupied by Purdue University and used by it
 27 for educational or research purposes, the trustees of the university may,
 28 upon a declaration of necessity recorded in its minutes, award contracts
 29 without advertising for bids or otherwise satisfying the requirements of
 30 this chapter, if the cost of work is estimated to be less than fifty
 31 thousand dollars (\$50,000). However, ~~bids shall be invited in~~
 32 **awarding a contract under this section, the trustees must do the**
 33 **following:**

34 **(1) Invite bids** from at least three (3) or more persons, firms,
 35 limited liability companies, or corporations known to deal in the
 36 work required to be done.

37 **(2) Record in the board's minutes** the ~~minutes of the board shall~~
 38 ~~show the~~ names of those invited to bid.

39 **(3) Award the contract to the lowest responsive and**
 40 **responsible contractor.**

41 SECTION 20. IC 5-16-1-1.9, AS AMENDED BY P.L.2-2007,
 42 SECTION 103, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2008]: Sec. 1.9. Notwithstanding this article, a state educational institution may award a contract for any ~~construction or repair work to any building, structure, or improvement of the institution~~ **public works project** without advertising for bids and meeting other contract awarding requirements of this article whenever the estimated cost of the project is less than fifty thousand dollars (\$50,000). However, in awarding any contract under this section the state educational institution must do the following:

(1) Invite bids from at least three (3) persons, firms, limited liability companies, or corporations known to deal in the work required to be done.

(2) Give notice of the project if the estimated cost of the project is more than twenty-five thousand dollars (\$25,000). If required, notice must include a description of the work to be done and be given in at least one (1) newspaper of general circulation printed and published in the county in which the work is to be done.

(3) Award the contract to the lowest ~~and best bidder:~~ **responsive and responsible contractor.**

SECTION 21. IC 5-16-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) Upon the filing of the plans, specifications, and drawings, as provided in section 1.4 of this chapter, the officer or agent shall twice publish a notice indicating that drawings, plans, and specifications are on file at the office and calling for sealed proposals for the work by a day fixed in the publication. The time lapse between the date of publication and the date of receiving bids is governed by the size of the contemplated project and is in the discretion of the board, commission, trustee, officer, or agent publishing the notice. In no event shall the lapsed time be more than six (6) weeks.

(b) Notwithstanding subsection (a), if a ~~public building or other public work or improvement works project~~ under this chapter is estimated to cost less than twenty-five thousand dollars (\$25,000) and a contract is to be awarded for the work, the awarding officer, commission, or agent may:

(1) publish notice in the manner provided in subsection (a); or

(2) invite bids from not less than three (3) persons, firms, limited liability companies, or corporations, known to deal in the work proposed to be done, by mailing a notice for the work not less than three (3) days before the time fixed for receiving bids indicating that plans and specifications are on file in a certain office.

SECTION 22. IC 5-16-1-6 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) This section
 2 applies to a public ~~building or other public work or improvement~~
 3 **works project** that may require creation of a trench of at least five (5)
 4 feet in depth.

5 (b) IOSHA regulations 29 C.F.R. 1926, Subpart P, for trench safety
 6 systems shall be incorporated into the contract documents for a public
 7 works project.

8 (c) The contract documents for a public works project shall provide
 9 that the cost for trench safety systems shall be paid for:

10 (1) as a separate pay item; or

11 (2) in the pay item of the principal work with which the safety
 12 systems are associated.

13 SECTION 23. IC 8-10-1-2.5 IS ADDED TO THE INDIANA CODE
 14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2008]: **Sec. 2.5. For purposes of public works projects, the**
 16 **definitions in IC 5-16-0.5 apply throughout this chapter.**

17 SECTION 24. IC 8-10-1-7 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. The commission is
 19 authorized and empowered to do the following:

20 (1) To adopt bylaws for the regulation of its affairs and the
 21 conduct of its business.

22 (2) To adopt an official seal which shall not be the seal of the
 23 state of Indiana.

24 (3) To maintain a principal office and sub-offices at such place or
 25 places within ~~the state~~ **Indiana** as it may designate.

26 (4) To sue and be sued, and to plead and be impleaded in its own
 27 name. However, actions at law against the commission shall be
 28 brought in the circuit court of the county in which the principal
 29 office of the commission is located or in the circuit court of the
 30 county in which the cause of action arose, if the county is located
 31 within ~~the state~~ **Indiana**. All summonses and legal notices of
 32 every kind shall be served on the commission by leaving a copy
 33 ~~thereof~~ at the principal office of the commission with the person
 34 in charge ~~thereof of the office~~ or with the secretary of the
 35 commission. However, no such action shall be deemed
 36 commenced until a copy of the summons and complaint, cross
 37 complaint, petition, bill, or pleading is served upon the attorney
 38 general of Indiana.

39 (5) To acquire, lease, construct, maintain, repair, police, and
 40 operate a port or project as provided in this chapter, and to
 41 establish rules and regulations for the use of the port or project,
 42 and other property subject to the jurisdiction and control of the

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commission.

(6) To issue both taxable and tax exempt revenue bonds of the state, payable solely from revenues, as herein provided, for the purpose of paying all or any part of the cost of a port or project.

(7) To acquire, lease, and operate tug boats, locomotives, and any and every kind of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, merchandise, or articles of commerce in, on, or around the port or project.

(8) To fix and revise from time to time and to collect fees, rentals, tolls, and other charges for the use of any port or project.

(9) To acquire, obtain option on, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter.

(10) To designate the location and establish, limit, and control points of ingress to and egress from a port or project.

(11) To lease to others for development or operation such portions of any port or project, on such terms and conditions as the commission shall deem advisable.

(12) To make and enter into all contracts, undertakings, and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. When the cost of any such contract for construction, or for the purchase of equipment, materials, or supplies, involves an expenditure of more than twenty-five thousand dollars (\$25,000), the commission shall make a written contract with the lowest **and best responsive and responsible** bidder after advertisement for not less than two (2) consecutive weeks in a newspaper of general circulation in the county where the construction will occur and in such other publications as the commission shall determine. The notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications ~~therefor~~ **for the work** may be examined, and the time and place of receiving bids. Each bid shall contain the full name of every person or company interested in it and shall be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance of its proposal secured. The commission may reject any and all bids. A bond with good and sufficient surety as shall be approved by the commission shall be required of all contractors in an amount equal to at least fifty percent (50%) of the contract price conditioned upon the faithful performance of

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the contract.

(13) To construct, assemble, or otherwise build, own, lease, operate, manage, or otherwise control any project throughout Indiana for the purpose of promoting economic growth and development throughout Indiana, retaining existing employment within Indiana, and attracting new employment opportunities within Indiana.

(14) To employ an executive director or manager, consulting engineers, superintendents, and such other engineers, construction and accounting experts, attorneys, and other employees and agents as may be necessary in its judgment, and to fix their compensation, but no compensation of any employee of the commission shall exceed the compensation of the highest paid officer or employee of the state.

(15) To receive and accept from any federal agency grants for or in aid of the construction of any port or project, and to receive and accept aid or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made.

(16) To provide coverage for its employees under the provisions of IC 22-3-2 through IC 22-3-6, and IC 22-4.

(17) To do all acts and things necessary or proper to carry out the powers expressly granted in this article.

(18) To hold, use, administer, and expend such sum or sums as may herein or hereafter be appropriated or transferred to the commission.

SECTION 25. IC 8-10-1-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 29. **(a) The following apply to a public works contract entered into by the commission:**

(1) IC 5-16-7 (when applicable).

(2) IC 5-22 when the commission purchases supplies.

(3) IC 36-1-12.

(4) Any federal law applicable to the public works project.

(b) Unless the commission publicly declares an emergency, it may not during any six (6) month period make separate contracts with another party for similar construction projects or the purchase of similar equipment, materials, or supplies under IC 8-10-1-7(5) without advertising for and accepting public bids, if the aggregate cost of the separate contracts is more than twenty-five thousand dollars (\$25,000).

(c) A commission member who knowingly violates subsection **(b)** commits a Class D felony.

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1 (c) (d) A person who accepts a contract with the commission
 2 knowing that subsection (a) (b) was violated in connection with the
 3 contract commits a Class D felony and may not be a party to or benefit
 4 from any contract with a public body in the state for two (2) years from
 5 the date of the person's conviction.

6 SECTION 26. IC 8-15-2-4.5 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2008]: **Sec. 4.5. For purposes of contracts for construction,
 9 maintenance, or repair of toll roads, public improvements, or
 10 arterial streets and roads, the definitions in IC 5-16-0.5 apply
 11 throughout this chapter.**

12 SECTION 27. IC 8-15-2-5, AS AMENDED BY P.L.133-2007,
 13 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2008]: Sec. 5. The authority may do the following:

15 (1) Construct, maintain, repair, police, and operate toll road
 16 projects (as defined in this chapter), public improvements, and
 17 arterial streets and roads under section 1 of this chapter and
 18 establish rules for the use of any such toll road project, public
 19 improvement, or arterial street or road.

20 (2) Issue toll road revenue bonds of the state, payable solely from
 21 an allocation of money from the rural transportation road fund
 22 under IC 8-9.5-8-16 or from revenues or from the proceeds of
 23 bonds issued under this chapter and earnings thereon, or from all
 24 three (3), for the purpose of paying all or any part of the cost of
 25 any one (1) or more toll road projects or for the purpose of
 26 refunding any other toll road revenue bonds.

27 (3) Establish reserves from the proceeds of the sale of bonds or
 28 from other funds, or both, to secure the payment of the bonds.

29 (4) Fix and revise from time to time and charge and collect tolls
 30 for transit over each toll road project constructed by it.

31 (5) Acquire in the name of the state by purchase or otherwise, on
 32 such terms and conditions and in such manner as it may deem
 33 proper, or by the exercise of the right of condemnation in the
 34 manner as provided by this chapter, such public or private lands,
 35 including public parks, playgrounds or reservations, or parts
 36 thereof or rights therein, rights-of-way, property, rights,
 37 easements, and interests, as it may deem necessary for carrying
 38 out the provisions of this chapter. The authority may also:

39 (A) sell, transfer, and convey any such land or any interest
 40 therein so acquired, or any portion thereof, whether by
 41 purchase, condemnation, or otherwise, and whether such land
 42 or interest therein had been public or private, when the same

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shall no longer be needed for such purposes; and

(B) transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any toll road project, or as otherwise required under the provisions of this chapter to a state agency or political subdivision.

(6) Designate the locations and establish, limit, and control such points of ingress to and egress from each toll road project as may be necessary or desirable in the judgment of the authority to ensure the proper operation and maintenance of such projects, and to prohibit entrance to such project from any point not so designated. The authority shall not grant, for the operation of transient lodging facilities, either ingress to or egress from any project, including the service areas thereof on which are located service stations and restaurants, and including toll plazas and paved portions of the right-of-way. The authority shall cause to be erected, at its cost, at all points of ingress and egress, large and suitable signs facing traffic from each direction on the toll road. Such signs shall designate the number and other designations, if any, of all United States or state highways of ingress or egress, the names of all Indiana municipalities with a population of five thousand (5,000) or more within a distance of seventy-five (75) miles on such roads of ingress or egress, and the distance in miles to such designated municipalities.

(7) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, IC 8-9.5-8, or IC 8-15.5. When the cost under any such contract or agreement, other than:

(A) a contract for compensation for personal services;

(B) a contract with the department under IC 8-9.5-8-7;

(C) a lease with the department under IC 8-9.5-8-8; or

(D) a contract, a lease, or another agreement under IC 8-15.5; involves an expenditure of more than ten thousand dollars (\$10,000), the authority shall make a written contract with the lowest ~~and best~~ **responsive and responsible** bidder after advertisement for not less than two (2) consecutive weeks in a newspaper of general circulation in Marion County, Indiana, and in such other publications as the authority shall determine **before opening bids**. Such notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications ~~therefor~~ **for the work** may be examined, and the time and place of receiving bids. Each

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bid shall contain the full name of every person or company interested in it and shall be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance of its proposal secured. The authority may reject any and all bids. A bond with good and sufficient surety shall be required by the authority of all contractors in an amount equal to at least fifty percent (50%) of the contract price, conditioned upon the faithful performance of the contract. The authority shall require a bid, performance, and payment bond from a contractor for a project if the estimated cost of the project is more than two hundred thousand dollars (\$200,000). The authority may require a bid, performance, or payment bond from a contractor for a project if the estimated cost of the project is not more than two hundred thousand dollars (\$200,000).

(8) Employ consulting engineers, superintendents, managers, and such other engineers, construction and accounting experts, bond counsel, other attorneys with the approval of the attorney general, and other employees and agents as may be necessary in its judgment to carry out the provisions of this chapter, and to fix their compensation. However, all such expenses shall be payable solely from the proceeds of toll road revenue bonds issued under the provisions of this chapter or from revenues.

(9) Receive and accept from any federal agency, subject to IC 8-23-3, grants for or in aid of the construction of any toll road project, and receive and accept aid or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made, and repay any grant to the authority or to the department from a federal agency if such repayment is necessary to free the authority from restrictions which the authority determines to be in the public interest to remove.

(10) Establish fees, charges, terms, or conditions for any expenditures, loans, or other form of financial participation in projects authorized as public improvements on arterial streets and roads under section 1 of this chapter.

(11) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and agree to and comply with conditions attached to the aid.

(12) Accept transfer of a state highway to the authority under

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1 IC 8-23-7-23 and pay the cost of conversion of the state highway
2 to a toll road project.

3 (13) Enter into contracts or leases with the department under
4 IC 8-9.5-8-7 or IC 8-9.5-8-8 and in connection with the contracts
5 or leases agree with the department for coordination of the
6 operation and the repair and maintenance of toll road projects and
7 tollways which are contiguous parts of the same public road,
8 including joint toll collection facilities and equitable division of
9 tolls.

10 (14) Enter into public-private agreements under IC 8-15.5 and do
11 all acts and things necessary or proper to carry out the purposes
12 set forth in IC 8-15.5.

13 (15) Do all acts and things necessary or proper to carry out this
14 chapter.

15 SECTION 28. IC 8-21-9-12, AS AMENDED BY P.L.229-2005,
16 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2008]: Sec. 12. (a) The department has jurisdiction only over
18 two (2) major new continental or intercontinental airport facilities
19 designed and constructed to serve a part of Indiana or adjacent states.

20 (b) The department may designate the location and character of all
21 airport facilities which the department may hold, own, or over which
22 it is authorized to act and to regulate all matters related to the location
23 and character of the airport facilities.

24 (c) The department may designate the location and establish, limit,
25 and control points of ingress to and egress from any airport property.

26 (d) The department may lease to others for development or
27 operation the parts of any airport or airport facility on terms and
28 conditions as the department considers necessary.

29 (e) The department may make directly, or through hiring of expert
30 consultants, investigations, and surveys of whatever nature, including,
31 but not limited to, studies of business conditions, freight rates, airport
32 services, physical surveys of the conditions of structures, and the
33 necessity for additional airports or for additional airport facilities for
34 the development and improvement of commerce and for the more
35 expeditious handling of commerce, and to make studies, surveys, and
36 estimates as are necessary for the execution of its powers under this
37 chapter.

38 (f) The department may make and enter into all contracts,
39 undertakings, and agreements necessary or incidental to the
40 performance of its duties and the execution of its powers under this
41 chapter. **The following apply to contracts entered into under this**
42 **chapter:**

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1 (1) IC 5-22 for contracts for equipment, materials, or supplies.

2 (2) IC 36-1-9.5 for contracts for construction or
3 improvements, other than contracts for:

4 (A) professional services; or

5 (B) acquisition of land, easements, or rights-of-way.

6 When the cost of any such contract for construction, or for the purchase
7 of equipment, materials, or supplies, involves an expenditure of more
8 than five thousand dollars (\$5,000), the department shall make a
9 written contract with the lowest **and best responsive and responsible**
10 bidder after advertisement for not less than two (2) consecutive weeks
11 in a newspaper of general circulation in Marion County, Indiana, and
12 in such other publications as the department shall determine. Such
13 notice shall state the general character of the materials to be furnished,
14 the place where plans and specifications therefor may be examined,
15 and the time and place of receiving bids. Each bid shall contain the full
16 name of every person or company interested in it and shall be
17 accompanied by a sufficient bond or certified check on a solvent bank
18 that if the bid is accepted a contract will be entered into and the
19 performance of its proposal secured. The department may reject any
20 and all bids. A bond with good and sufficient surety, as shall be
21 approved by the department, shall be required of all contractors in an
22 amount equal to at least fifty percent (50%) of the contract price
23 conditioned upon the faithful performance of the contract.

24 (g) The department may fix and revise periodically and charge and
25 collect equitable rates, fees, rentals, or other charges for the use of any
26 airport facility or airport facilities under its control, which rates, fees,
27 rentals, or other charges shall be in amounts reasonably related to the
28 cost of providing and maintaining the particular airport facility or
29 airport facilities for which these rates, fees, rentals, and other charges
30 are established.

31 (h) The department may make application for, receive, and accept
32 from any federal agency, grants for or in aid of the planning,
33 construction, operating, or financing of any airport facility, and to
34 receive and accept contributions from any source of either money,
35 property, labor, or other things of value, to be held, used, and applied
36 for the purposes for which made, in each case on such terms and
37 conditions as the department considers necessary or desirable. The
38 department may enter into and carry out contracts and agreements in
39 connection with this subsection.

40 (i) The department may appear in its own behalf before boards,
41 commissions, departments, or other agencies of the federal government
42 or of any state or international conference and before committees of the

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1 Congress of the United States and the general assembly of Indiana in
 2 all matters relating to the designs, establishment, construction,
 3 extension, operations, improvements, repair, or maintenance of any
 4 airport or airport facility operated and maintained by the department
 5 under this chapter, and to appear before any federal or state agencies
 6 in matters relating to air rates, airport services and charges,
 7 differentials, discriminations, labor relations, trade practices, and all
 8 other matters affecting the physical development of and the business
 9 interest of the department and those it serves.

10 (j) The department may contract for the services of consulting
 11 engineers, architects, attorneys, accountants, construction and financial
 12 experts, and such other individuals as are necessary in its judgment.
 13 However, the employment of an attorney shall be subject to such
 14 approval of the attorney general as may be required by law.

15 (k) The department may do all things necessary and proper to
 16 promote and increase commerce within its territorial jurisdiction,
 17 including cooperation with civic, technical, professional, and business
 18 organizations and associations, the office of tourism development, and
 19 the Indiana economic development corporation.

20 (l) The department may establish and maintain a traffic bureau for
 21 the purpose of advising the department as to the airport's competitive
 22 economic position with other airports.

23 (m) The department may contract for the use of any license, process,
 24 or device, whether patented or not, which the department finds is
 25 necessary for the operation of any airport facility, and may permit the
 26 use thereof by any lessee on such terms and conditions as the
 27 department may determine. The cost of such license, process, or device
 28 may be included as part of the cost of the airport facility.

29 (n) The department may issue airport revenue bonds and airport
 30 revenue funding bonds.

31 (o) The department may do all acts and things necessary or proper
 32 to carry out the powers expressly granted in this chapter.

33 SECTION 29. IC 8-23-1-1.5 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2008]: **Sec. 1.5. For purposes of public works projects, the**
 36 **definitions in IC 5-16-0.5 apply throughout this article.**

37 SECTION 30. IC 8-23-9-3 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. Except as provided
 39 in sections 4 and 4.5 of this chapter, the commissioner shall let the
 40 contract for the construction, improvement, or maintenance of the road
 41 to the lowest ~~and best~~ **responsive and responsible** bidder. The
 42 determination of the lowest ~~and best~~ **responsive and responsible**

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bidder must include any requirement imposed under section 13 of this chapter. The **bid of the lowest and best bid responsive and responsible bidder** may not be for a greater sum than the estimated cost of the project.

SECTION 31. IC 8-23-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. The department may accept a proposal and award a contract for the construction, improvement, or maintenance of a road **to a responsive and responsible bidder** if:

- (1) the bids are not more than five percent (5%) above the estimated cost of the project;
- (2) the commissioner believes that awarding a contract under this section is in the best interests of the state; and
- (3) the award would comply with any requirement imposed under section 13 of this chapter.

SECTION 32. IC 8-23-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) A **bidder person** desiring to submit to the department a bid for the performance of a contract the department proposes to let must apply to the department for qualification and must use for that purpose the forms prescribed and furnished by the department. All applications must be verified by the applicant.

(b) The department shall act within thirty (30) days upon an application for qualification. Upon the receipt of an application for qualification, the department shall examine and may investigate the application and shall determine whether the applicant is **competent and a responsible contractor** and possesses the financial resources that satisfy this chapter.

(c) If the applicant is found to **possess be a responsible contractor and possesses** the qualifications prescribed by this chapter and by the rules adopted by the department, the department shall issue a certificate of qualification, which shall be valid for the period of one (1) year, or a shorter period of time that the department prescribes, unless revoked by the department for cause. The certificate of qualification must contain a statement fixing the aggregate amount of uncompleted work that the applicant will be permitted to have at any time under a contract with the department and may also, in the discretion of the department, contain a statement limiting a bidder to the submission of bids upon a certain class or classes of work. Subject to any restrictions as to amount or class of work, the certificate of qualification authorizes its holder to bid on all work on which bids are taken by the department during the period of time specified.

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(d) A certificate of qualification may be revoked by the department only after notice to the qualified bidder and an opportunity to be heard. The notice must be in writing and must state the grounds of the proposed revocation.

SECTION 33. IC 10-18-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) As used in this chapter, "board of public works" refers to the following:

(1) The board of public works and safety established in a city under IC 36.

(2) The board of public works in a city that has established a separate board of public works and a separate board of public safety under IC 36.

The term includes the department of public works in a city in which a department of public works has been established under IC 36.

(b) The definitions in IC 5-16-0.5 apply throughout this chapter.

SECTION 34. IC 10-18-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) After the board of public works has adopted the necessary designs, plans, and specifications for construction of the World War memorial structures as provided in this chapter, the board of public works shall award contracts for all or any part of the World War memorial structures to ~~competent and reliable contractors~~ as provided in this section.

(b) The board of public works shall publish for at least three (3) weeks, once each week, in a newspaper of general circulation, printed and published in the English language in the city, a notice:

(1) informing the public and contractors of the general nature of the structures to be constructed and of the fact that designs, plans, drawings, and specifications are on file in the office of the board of public works; and

(2) calling for sealed proposals for the work on a day not earlier than thirty (30) days from the first of such publications.

(c) The board of public works shall award the contract to the lowest responsible and responsive contractor.

~~(c)~~ (d) The board of public works shall, by order, impose conditions upon bidders, contractors, subcontractors, and materialmen with regard to bond and surety, guaranteeing the good faith and responsibility of the bidders, contractors, subcontractors, and materialmen and insuring the faithful completion of the work, according to contract, or for any other purpose.

~~(d)~~ (e) The board of public works shall reserve ten percent (10%) from payments or estimates on work in progress until the contract is completed and the work done is inspected and accepted by the board.

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All contracts with contractors, subcontractors, architects, or materialmen must reserve:

- (1) to the board of public works, for good cause shown, the right to cancel the contract and to award the work to others; and
- (2) at least ten percent (10%) from payments or estimates on work in progress until the contract is completed and the work done is inspected and accepted by the board.

(f) Payment by the board of public works, partial or final, may not be construed as a waiver of defective work or materials or as a release for damages on account of the defective work or materials. A surety may not be released from any obligation on the surety's bond if a contractor should be paid the whole or any part of the percentage required to be reserved from current estimates. A surety may not be released by any final payment made to a contractor.

SECTION 35. IC 14-14-1-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 2.7. The definitions in IC 5-16-0.5 apply throughout this chapter.**

SECTION 36. IC 14-14-1-18, AS AMENDED BY P.L.235-2005, SECTION 188, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. The commission may do the following:

- (1) Make and enter into all contracts, undertakings, and agreements necessary or incidental to the performance of the commission's duties and the execution of the commission's powers under this chapter. If the cost of a contract for construction or for the purchase of equipment, materials, or supplies involves an expenditure of more than twenty thousand dollars (\$20,000), the commission shall make a written contract with the lowest **and best responsive and responsible** bidder after advertisement for not less than two (2) consecutive weeks in a newspaper of general circulation in Marion County, Indiana, and in other publications if the commission determines **before opening the bids**. The notice must state the general character of the work and the general character of the materials to be furnished, the place where the plans and specifications may be examined, and the time and place of receiving bids. Each bid must contain the full name of every person or company interested in the bid and must be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance of the bidder's proposal secured. The commission may reject any and all bids. A

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bond with good and sufficient surety approved by the commission is required of all contractors in an amount equal to at least fifty percent (50%) of the contract price conditioned upon the faithful performance of the contract.

(2) Employ employees, fix their compensation, and define their duties.

(3) Contract for the following:

(A) Services, including services of engineers, architects, accountants, attorneys, financial advisers, project or construction managers, consultants, and experts as well as other contract services.

(B) Construction.

(C) Materials.

(D) Supplies.

(4) Conduct studies of the financial feasibility of proposed park projects.

(5) Use the services of professional and other personnel employed by a department or an agency of the state for purposes of studying the feasibility of or designing, constructing, or maintaining a park project.

(6) Receive and accept:

(A) from a federal agency grants for or in aid of the acquisition, construction, improvement, or development of a park project; and

(B) aid or contributions from any source of money, property, labor, or other things of value;

to be held, used, and applied only for the purposes, consistent with the purposes of this chapter, for which the grants and contributions may be made.

(7) Provide coverage for the commission's employees under IC 27-7-2 and IC 22-4.

(8) Do all acts and things necessary or proper to carry out the powers expressly granted in this chapter.

(9) Hold, use, administer, and expend the money appropriated or transferred to the commission, administer a general operating fund, the revolving fund created by this chapter, create and administer any other fund considered desirable, and enter into a covenant or pledge with respect to a fund created.

(10) Accept advances or grants from a state agency or fund authorized to make advances or grants and, for advances, enter into agreements concerning the repayment of the advance and repay the advances.

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SECTION 37. IC 14-26-8-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. The definitions in IC 5-16-0.5 apply throughout this chapter.**

SECTION 38. IC 14-26-8-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 36. (a) The county surveyor shall proceed to have the improvement constructed as provided by section 32 or 34 of this chapter. The county surveyor shall keep in the surveyor's office copies of the plans and specifications, which shall be open for the inspection of any landowner interested or any contractor who may be a prospective bidder on the work.

(b) The county surveyor shall give notice in a newspaper of general circulation printed and published in the following:

(1) Each county in which the lake lies.

(2) Each county where land assessed as benefited is situated.

(c) The notice must state that on a certain day and date, which may not be less than fifteen (15) days from the date of the publication, the surveyor will do the following:

(1) Receive sealed bids for the furnishing of all material and labor necessary for the construction of the work.

(2) Let the contract to the lowest ~~and best~~ **responsive and responsible** bidder or reject all bids and re-advertise for new bids.

(d) The surveyor may:

(1) let the work as a whole; or

(2) subdivide the work into at least two (2) sections and let the work in separate contracts that will, in the surveyor's best judgment, most speedily and economically accomplish the completion of the work.

SECTION 39. IC 14-27-6-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 31. (a) Except as provided in subsection (b), in the letting of a contract for the repair or equipment of a levee under the control of the board, the board shall, when:

(1) adopting plans;

(2) giving notice; and

(3) receiving bids;

comply with ~~statutes~~ **IC 5-3-1, IC 5-16-7 (when applicable), IC 5-22, IC 36-1-12, and other applicable state and federal laws.**

(b) If:

(1) an emergency arises involving the safety of human life due to accident or act of God; and

(2) the board declares the emergency;

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the board may purchase necessary equipment and appliances without advertising for bids.

SECTION 40. IC 20-25-4-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.5. The definitions in IC 5-16-0.5 apply throughout this chapter.**

SECTION 41. IC 20-25-4-3, AS ADDED BY P.L.1-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) This section does not apply if the board by formal vote elects to:

- (1) build;
- (2) enlarge;
- (3) make alterations to; or
- (4) make improvements to;

a school or building owned by the board if the project described in subdivisions (1) through (4) will cost not more than fifteen thousand dollars (\$15,000) and the board intends to complete the project using its own employees.

(b) If subsection (a) does not apply and the board determines to:

- (1) build;
- (2) enlarge;
- (3) make alterations to; or
- (4) make improvements to;

a school or building owned by the board, the cost of which is estimated to be more than ten thousand dollars (\$10,000), the business manager or other board designated employee shall advertise for bids in the manner provided in subsection (c).

(c) The advertisements for bids must be placed as follows:

- (1) One (1) advertisement must be placed each week for three (3) weeks.
- (2) The first advertisement must be placed at least twenty-one (21) days before the bids are opened.
- (3) The advertisement must be placed in two (2) newspapers of general circulation in the city.

The board shall enter in full in the minutes that advertisements for bids have been placed under this subsection.

(d) If bids are taken under this section, a bid must be:

- (1) enclosed by the bidder in an envelope sealed by the bidder; and
- (2) presented at a meeting of the board or the bid committee of the board at the time and place fixed by the advertisement.

A bid may not be received after the time established in the

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1 advertisement.

2 (e) The business manager at the hour established in the
3 advertisements and in the presence of the board or the bid committee
4 shall open all the bids. The bids must then be publicly read by a
5 designated employee and be immediately entered in full in the records
6 of the board.

7 (f) The board shall, by general rules, specify the condition of each
8 bid, and only the lowest ~~and best~~ bids from **responsive and** responsible
9 bidders may be accepted. The board may, if the board has reason to
10 suspect collusion among bidders, reject the bids of all bidders involved
11 in the collusion.

12 SECTION 42. IC 20-26-7-0.5 IS ADDED TO THE INDIANA
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2008]: **Sec. 0.5. The definitions in IC 5-16-0.5**
15 **apply throughout this chapter.**

16 SECTION 43. IC 20-26-7-21, AS ADDED BY P.L.1-2005,
17 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2008]: Sec. 21. (a) If the governing body or officer of a school
19 corporation determines to erect or build a school building or buildings
20 in which off-site construction techniques are to be used, the governing
21 body or officer shall advertise for plans and specifications and for bids
22 covering the plans and specifications.

23 (b) A bidder must file the bidder's plans or specifications with its
24 bid.

25 (c) The advertisement shall be published once each week for two (2)
26 consecutive weeks in two (2) newspapers published in the school
27 corporation. If only one (1) newspaper is published in the boundaries
28 of the school corporation, the advertisement shall be published in that
29 newspaper and in a newspaper of general circulation published in the
30 county where the school corporation is located. If a newspaper is not
31 published in the boundaries of the school corporation, the
32 advertisement shall be published in any two (2) newspapers of general
33 circulation published in the county where the school corporation is
34 located. If only one (1) newspaper is published in the county where the
35 school corporation is located, publication in one (1) newspaper is
36 sufficient.

37 (d) The advertisement:

- 38 (1) must contain a description of the building or buildings to be
39 erected and the estimated cost; and
40 (2) may not require plans and specifications or bids to be filed for
41 at least four (4) weeks after the date of the last publication of the
42 advertisement.

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(e) Subject to other applicable provisions of sections 20 through 25 of this chapter, the school corporation may accept the bid of the lowest **responsive and responsible** bidder. ~~submitting plans and specifications considered satisfactory by the school corporation for a building or buildings.~~

SECTION 44. IC 20-48-4-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.5. The definitions in IC 5-16-0.5 apply throughout this chapter.**

SECTION 45. IC 20-48-4-3, AS ADDED BY P.L.2-2006, SECTION 171, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) If a trustee finds it necessary to erect a new school, the trustee shall procure suitable specifications for the school to be used by the bidders in bidding and in the construction of the school. If the trustee desires to purchase school furniture, fixtures, maps, charts, or other school supplies, not including fuel and literary periodicals, as authorized by the township board, the trustee shall make an estimate of the kinds and amounts, itemized particularly, to be used by bidders. If it is necessary to make repairs to a school, other than current or incidental repairs, the trustee shall make an itemized statement of the nature and character of the work to be performed for the use of bidders.

(b) The trustee must comply with IC 5-16-7 (when applicable), IC 5-22, IC 36-1-12, and other applicable state and federal laws.

~~(b)~~ (c) All contracts shall be let after notice is given by publication in accordance with IC 5-3-1.

~~(c)~~ (d) The township board shall attend the letting. At the letting, all the work or supplies in any one (1) class shall be included and let in a single contract. All bids must be in writing and opened and read publicly at the date, time, and place fixed in the notice. In consultation with the township board, the trustee may take time to examine the bids and determine which is **submitted by** the lowest **responsive and best bid**. ~~responsible bidder~~. The board may reject any bid. The trustee shall endorse either acceptance or rejection on the bids and preserve them.

~~(d)~~ (e) If a bid is accepted, a proper contract shall then be reduced to writing for the building, repairs, or supplies and signed by the successful bidder and the trustee. The trustee shall require the bidder to give bond with security to the trustee's approval for the faithful execution of the contract.

SECTION 46. IC 21-37-1-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2008]: **Sec. 0.5. The definitions in IC 5-16-0.5 apply to provisions of this article that relate to public works projects.**

SECTION 47. IC 21-37-3-3, AS ADDED BY P.L.2-2007, SECTION 278, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) Before securing services described in section 2 of this chapter, the state educational institution must invite bids from at least three (3) bidders. The state educational institution must mail a notice to each bidder not less than ten (10) days before the time fixed for receiving bids. Each bidder shall submit under oath as a part of the bid a statement of:

- (1) the bidder's professional experience;
- (2) the bidder's proposed plan for performing the work;
- (3) the equipment and personnel available for the performance of the work;
- (4) the bidder's current financial status;
- (5) the bidder's best estimate of the cost of each item of work to be performed, including a breakdown of all labor and materials required to complete the work; and
- (6) if a trust, the name of each beneficiary of the trust and settlor empowered to revoke or modify the trust.

(b) After the bids have been submitted to the institution, the state educational institution may only contract with the lowest ~~and best~~ **responsive and responsible** bidder using terms and conditions that will accomplish the work at the lowest possible cost to the state.

SECTION 48. IC 36-1-2-15.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15.5. (a) "Responsible bidder or quoter" means ~~one~~ **the following**:

(1) **For purposes of awarding a contract other than a public works contract, a person** who is capable of performing the contract requirements fully and who has the integrity and reliability that will assure good faith performance.

(2) **For purposes of awarding a public works contract, the term has the meaning set forth in IC 5-16-0.5-9.**

(b) "Responsive bidder or quoter" means ~~one~~ **the following**:

(1) **For purposes of awarding a contract other than a public works contract, a person** who has submitted a bid or quote conforming in all material respects to the specifications.

(2) **For purposes of awarding a public works contract, the term has the meaning set forth in IC 5-16-0.5-10.**

SECTION 49. IC 36-1-9.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This chapter

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applies only to contracts awarded by:

(1) **the Indiana department of transportation awarding contracts under IC 8-21-9;**

(2) local boards of aviation commissioners operating under IC 8-22-2; and

(3) local airport authorities operating under IC 8-22-3.

(b) This chapter applies only to contracts for the following:

(1) The construction or maintenance of buildings, runways, roads, and other improvements.

(2) The purchase of materials, equipment, and supplies.

SECTION 50. IC 36-1-9.5-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) An applicant must possess the qualifications required under this chapter and the entity must determine that the applicant is a ~~competent~~ and responsible bidder **(as defined in IC 5-16-0.5-9)** before the entity may issue the applicant a certificate of qualification.

~~(b) In making a determination under this section, an entity may consider only the following areas:~~

~~(1) The contractor's organization and personnel;~~

~~(2) The contractor's work experience and prosecution of work on previous contracts;~~

~~(3) The condition and adequacy of the contractor's equipment;~~

~~(4) The contractor's financial condition and the quality of the financial information furnished by the contractor.~~

~~(c)~~ (b) An entity may not arbitrarily or capriciously refuse to issue a certificate of qualification to an applicant.

SECTION 51. IC 36-1-12-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. The definitions in IC 5-16-0.5 apply throughout this chapter.**

SECTION 52. IC 36-1-12-4, AS AMENDED BY P.L.169-2006, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) This section applies whenever the cost of a public work project will be:

(1) at least seventy-five thousand dollars (\$75,000) in:

(A) a consolidated city or second class city;

(B) a county containing a consolidated city or second class city; or

(C) a regional water or sewage district established under IC 13-26; or

(2) at least fifty thousand dollars (\$50,000) in a political subdivision or an agency not described in subdivision (1).

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(b) The board must comply with the following procedure:

(1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.

(2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).

(3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.

(4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.

(5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board, but it may not be more than six (6) weeks.

(6) If the cost of a project is one hundred thousand dollars (\$100,000) or more, the board shall require the bidder to **be responsive and responsible. The board shall also require the bidder to submit, under oath and as part of the bid, a financial statement, a statement of experience a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work, and financial condition.** The statement shall be submitted on forms prescribed by the state board of accounts **and must include the following:**

(A) A financial statement.

(B) A description of the bidder's organization, personnel, and experience.

(C) A proposed plan for the performance of the public work.

(D) A description of the equipment that the bidder has available for the performance of the public work.

If a bidder fails to provide accurate information required by this subdivision, the board shall reject the bid, and the contract awarded is void.

(7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall

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be opened publicly and read aloud at the time and place designated and not before.

(8) Except as provided in subsection (c), the board shall:

(A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or

(B) reject all bids submitted.

(9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.

(10) In determining whether a bidder is responsive, the board may consider the following factors:

(A) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications;

(B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders;

(C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract;

(11) In determining whether a bidder is a responsible bidder, the board may consider the following factors:

(A) The ability and capacity of the bidder to perform the work;

(B) The integrity, character, and reputation of the bidder;

(C) The competence and experience of the bidder;

(12) The board shall require the bidder to submit an affidavit:

(A) that the bidder has not entered into a combination or agreement:

(i) relative to the price to be bid by a person;

(ii) to prevent a person from bidding; or

(iii) to induce a person to refrain from bidding; and

(B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

SECTION 53. IC 36-1-12-5, AS AMENDED BY P.L.195-2007,

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SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) This section applies whenever a public work project is estimated to cost less than fifty thousand dollars (\$50,000). Except as provided in subsection (g) for:

(1) the Indiana department of transportation awarding contracts under IC 8-21-9;

(2) local boards of aviation commissioners; and

(3) local airport authorities;

if a contract is to be awarded, the board may proceed under section 4 of this chapter or under subsection (b) or (c).

(b) The board must proceed under the following provisions:

(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) The board shall award the contract for the public work to the lowest responsible and responsive quoter.

(4) The board may reject all quotes submitted.

(5) If the board rejects all quotes under subdivision (4), ~~of this section~~, the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.

(c) The board may not proceed under subsection (b) for the resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge, unless:

(1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and

(2) the specifications define the geographic points at which the project begins and ends.

(d) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.

(e) The board may purchase or lease supplies in the manner provided in IC 5-22 and perform the public work by means of its own workforce without awarding a public work contract.

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(f) Before the board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

(g) This subsection applies to **the following:**

(1) the Indiana department of transportation awarding contracts under IC 8-21-9;

(2) local boards of aviation commissioners operating under IC 8-22-2; and

(3) local airport authorities operating under IC 8-22-3.

If the contract is to be awarded by a board **or department** to which this subsection applies, or to a designee of the board under subsection (h), the board or its designee may proceed under section 4 of this chapter or under the following provisions. The board or its designee may invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing the persons a copy of the plans and specifications for the work not less than seven (7) days before the time fixed for receiving quotes. If the board or its designee receives a satisfactory quote, the board or its designee shall award the contract to the lowest responsible and responsive quoter for the class of work required. The board or its designee may reject all quotes submitted and, if no valid quotes are received for the class of work, contract for the work without further invitations for quotes.

(h) The board may delegate its authority to award a contract for a public works project that is estimated to cost less than fifty thousand dollars (\$50,000) to the airport personnel in charge of airport public works projects.

(i) Quotes for public works projects costing less than twenty-five thousand dollars (\$25,000) may be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection (b)(1) does not apply to quotes solicited under this subsection.

SECTION 54. IC 36-9-27-78 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 78. (a) Whenever the board is ready to let contracts, it shall publish notice in accordance with IC 5-3-1. The notice must:

(1) state that at a date, time, and place the board will receive bids on the work;

(2) generally and concisely describe the nature of the work to be done and materials to be furnished;

(3) invite sealed bids; and

(4) state that prospective bidders may obtain plans, specifications,

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and forms from the county surveyor in charge of the work.
A defect in the form of the notice does not invalidate proceedings under the notice.

(b) The board must also comply with IC 5-16-7 (when applicable), IC 5-22, IC 36-1-12, and other applicable state and federal laws.

~~(b)~~ **(c)** Each bidder shall deposit with ~~his~~ **the** bid, at ~~his~~ **the bidder's** option, either a certified check made payable to the board in the sum of five percent (5%) of the bid or a bid bond in the sum of five percent (5%) of the bid. If a bidder elects to deposit a bid bond, the bond must be payable to the board with sufficient sureties, and the bond must be conditioned upon the bidder's execution of a contract in accordance with ~~his~~ **the** bid if accepted by the board and must provide for the forfeiture of five percent (5%) of the amount of the bid upon ~~his~~ **the bidder's** failure to do so. The board shall return all checks and bonds submitted by unsuccessful bidders and shall return a successful bidder's check or bond when ~~he~~ **the bidder** enters into a contract with the board.

~~(c)~~ **(d)** At the hour specified in the notice for receiving the bids, the board shall open and examine all bids. The board shall then promptly award the contract or contracts to the lowest **responsive and responsible** bidder or bidders. ~~it finds to be qualified. In determining whether a bidder is qualified, the board shall consider the complexity and magnitude of the work to be performed, and the skill and experience of the bidder.~~ Within five (5) days after the acceptance of a bid, the successful bidder shall enter into a contract with the board that complies with subsection ~~(d)~~ **(e)**. If a successful bidder fails to enter into ~~such~~ a contract, ~~he~~ **the bidder** forfeits to the board, as liquidated damages, the check or bond deposited under subsection ~~(b)~~ **(c)**.

~~(d)~~ **(e)** The contract between the board and a successful bidder must provide:

- (1) that the contractor will perform the work under the supervision of the county surveyor and in accordance with the plans, specifications, and profiles adopted by the board;
- (2) that a claim for payment under the contract will not be approved by the board until the work for which the claim is presented has been approved by the surveyor;
- (3) the time within which the work must be completed;
- (4) that fifteen percent (15%) of the contract price shall be withheld by the board for a period of sixty (60) days after the completion of the work, for the purpose of securing payment of

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suppliers, laborers, and subcontractors; and

(5) for other terms that the board considers appropriate.

~~(e)~~ **(f)** Upon execution of the contract, the successful bidder shall give to the board a bond payable to the board, in an amount fixed by the board but not less than the amount of the bid, and with a corporate surety licensed to do business in Indiana. The bond must be conditioned on the faithful performance of the contract and the payment of all expenses and damages incurred under the contract, including payment of all suppliers, laborers, and subcontractors. However, ~~in lieu~~ **instead** of a corporate surety bond, the board may accept:

(1) a cash bond;

(2) a property bond; or

(3) a bond from a sufficiently financed private bonding company.

SECTION 55. IC 36-9-27-79.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 79.1. Notwithstanding sections 77 and 78 of this chapter, the following provisions apply whenever the board estimates that the amount of the contracts to be let is not more than seventy-five thousand dollars (\$75,000):

(1) The board need not advertise in the manner provided by section 78 of this chapter. If the board does not advertise, it shall mail written invitations for bids to at least three (3) persons believed to be interested in bidding on the work. The invitations shall be mailed at least seven (7) days before the date the board will receive bids, and must state the nature of the contracts to be let and the date, time, and place bids will be received.

(2) The board may authorize the county surveyor to contract for the work in the name of the board.

(3) The contracts may be for a stated sum or may be for a variable sum based on per unit prices or on the hiring of labor and the purchase of material.

(4) The contracts shall be let in accordance with the statutes governing:

(A) public purchase, including IC 5-22; and

(B) public works, including IC 36-1-12.

(5) The board may for good cause waive any requirement for the furnishing by the bidder of a bid bond or surety and the furnishing by a successful bidder of a performance bond.

SECTION 56. IC 36-9-29-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) All contracts of the flood control district for the construction of flood control works shall be let by the flood control board under the statutes concerning the

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1 letting of contracts for public improvements by the works board of the
 2 city. The flood control board may let one (1) contract for the entire
 3 works or separate contracts for parts of the works.

4 (b) All contracts shall be awarded to the lowest ~~and best responsive~~
 5 **and responsible** bidder. However, a contract may not be let at a bid
 6 higher than the cost of the work, as shown by the estimates previously
 7 adopted and filed, unless approved by the circuit court on petition of
 8 the flood control board.

9 (c) All contracts must be in writing and signed by the flood control
 10 board's president or vice president and by its executive secretary.

11 (d) The validity of a contract may be questioned only in an action to
 12 enjoin the execution of the contract, filed within ten (10) days after the
 13 date of its execution.

14 SECTION 57. IC 36-9-36-22 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) If the works
 16 board finally orders an improvement, the works board shall ~~advertise~~
 17 **for bids for the work as required by comply with** IC 36-1-12.

18 (b) The advertisement must state the following:

19 (1) That on the date named, the unit will receive bids for the
 20 improvement according to the resolution as modified or
 21 confirmed.

22 (2) The part of the cost of the improvement, if any, that will be
 23 paid by the unit.

24 (c) On the date named, all bids shall be publicly opened and
 25 considered.

26 SECTION 58. IC 36-1-12-2 IS REPEALED [EFFECTIVE JULY 1,
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